

CHAPTER 220
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

347—220.1(91D) Definitions.

220.1(1) and **220.1(2)** Reserved.

220.1(3) “Public agency” means the state of Iowa, or political subdivision of the state.

SOURCE: 29 CFR 553.1.

347—220.2(91D) Purpose and scope.

220.2(1) Reserved.

220.2(2) Rules 220.3(91D) to 220.51(91D) interpret and apply the special provisions that are generally applicable to all covered and nonexempt employees of state and local governments. The rules also contain provisions concerning certain individuals (i.e., elected officials, their appointees, and legislative branch employees) who are excluded from the definition of “employee” and thus from coverage. These rules also interpret and apply the federal Fair Labor Standards Act, 29 U.S.C. 207(o), 29 U.S.C. 207(p)(2), and 29 U.S.C. 207(p)(3), and 29 U.S.C. 211(c) regarding compensatory time off, occasional or sporadic part-time employment, and the performance of substitute work by public agency employees, respectively.

220.2(3) Rules 220.100(91D) to 220.106(91D) deal with “volunteer” services performed by individuals for public agencies. Rules 220.200(91D) to 220.233(91D) apply various provisions as they relate to fire protection and law enforcement employees of public agencies.

SOURCE: 29 CFR 553.2.

347—220.3 to 220.10 Reserved.

347—220.11(91D) Exclusion for elected officials and their appointees.

220.11(1) Subrules 215.3(7) “a” and 215.3(7) “b”(1) to (5) of [347] provide an exclusion from the coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members and officials in policy-making positions who are selected or appointed by the elected public officials and certain advisers to such officials.

220.11(2) The statutory term “member of personal staff” generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with the official. The term typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official.

220.11(3) In order to qualify as personal staff members or officials in policy-making positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term “civil service laws” refers to a personnel system established by law which is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and which uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

220.11(4) The exclusion for “immediate adviser” to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

SOURCE: 29 CFR 553.11.

347—220.12(91D) Exclusion for employees of legislative branches.

220.12(1) Subrules 215.3(7) “a” and 215.3(7) “b”(1) to (5) of [347] provide an exclusion from the definition of the term “employee” for individuals who are not subject to the civil service laws of

their employing agencies and are employed by legislative branches or bodies of the state and its political subdivisions.

220.12(2) Employees of the state or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees (as discussed in rule 220.11(91D)), do not come within this exclusion.

SOURCE: 29 CFR 553.12.

347—220.13 to 220.19 Reserved.

347—220.20(91D) Introduction. A public agency which is the state or a political subdivision of the state is authorized to provide compensatory time off (with certain limitations, as provided in rule 220.21(91D)) in lieu of monetary overtime compensation.

SOURCE: 29 CFR 553.20.

347—220.21(91D) Compensatory time and compensatory time off. The terms “compensatory time” and “compensatory time off” mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate.

SOURCE: 29 CFR 553.21.

347—220.22 to 220.26 Reserved.

347—220.27(91D) Payments for unused compensatory time.

220.27(1) Payments for accrued compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

220.27(2) Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than:

a. The average regular rate received by the employee during the last three years of the employee’s employment, or

b. The final regular rate received by the employee, whichever is higher.

220.27(3) The phrase “last three years of employment” means the three-year period immediately prior to termination. Where an employee’s last three years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, a break in service must have been intended to be permanent and any accrued compensatory time must have been cashed out at the time of initial separation. Where the final period of employment is less than three years, the average rate still must be calculated based on the rate(s) in effect during the period.

220.27(4) The term “regular rate” is defined in 29 CFR 778.108.

SOURCE: 29 CFR 553.27.

347—220.28(91D) Other compensatory time.

220.28(1) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory requirement is considered “other” compensatory time. The term “other” compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used.

220.28(2) and 220.28(3) Reserved.

220.28(4) The rate at which “other” compensatory time is earned is not required to be at a rate of one and one-half hours for each hour of employment. The rate at which “other” compensatory time is

earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

SOURCE: 29 CFR 553.28.

347—220.29 Reserved.

OTHER EXEMPTIONS

347—220.30 Reserved.

347—220.31(91D) Substitution—Federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3).

220.31(1) Individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. Where one employee substitutes for another, each employee will be credited as if the employee had worked the normal work schedule for that shift.

220.31(2) An employee's decision to substitute will be considered to have been made at the employee's sole option when it has been made (a) without fear of reprisal or promise of reward by the employer, and (b) exclusively for the employee's own convenience.

SOURCE: 29 CFR 553.31.

347—220.32 to 220.49 Reserved.

RECORD KEEPING

347—220.50(91D) Records to be kept of compensatory time. For each employee subject to the compensatory time and compensatory time off provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(o), a public agency shall maintain and preserve records containing the basic information and data required by rule 347—216.2(91D) and:

220.50(1) The number of hours of compensatory time earned pursuant to the federal Fair Labor Standards Act, 29 U.S.C. 207(o), each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;

220.50(2) The number of hours of compensatory time used each workweek, or other applicable work period, by each employee;

220.50(3) The number of hours of compensatory time compensated in cash, the total amount paid and the date of payment; and

220.50(4) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If the agreement or understanding is not in writing, a record of its existence must be kept.

SOURCE: 29 CFR 553.50.

347—220.51 to 220.99 Reserved.

VOLUNTEERS

347—220.100(91D) General. Individuals performing volunteer services for units of the state and local governments will not be regarded as "employees."

SOURCE: 29 CFR 553.100.

347—220.101(91D) "Volunteer" defined.

220.101(1) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer. Individuals performing hours of service for a public agency will be considered volunteers for the time so spent and not subject to the minimum wage requirement when the hours of service are performed in accord with 347—subparagraphs 215.3(8)“b”(1) and (2) and the guidelines in rules 220.100(91D) to 220.106(91D).

220.101(2) Reserved.

220.101(3) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

220.101(4) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

SOURCE: 29 CFR 553.101.

347—220.102(91D) Employment by the same public agency.

220.102(1) Subparagraph 215.3(8)“b”(2) of [347] does not permit an individual to perform hours of volunteer service for a public agency when the hours involve the same type of services which the individual is employed to perform for the same public agency.

220.102(2) Whether two agencies of the same state or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

SOURCE: 29 CFR 553.102.

347—220.103(91D) “Same type of services” defined.

220.103(1) Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase “same type of services” means similar or identical services. In general, the duties and other factors contained in the definitions of the three-digit categories of occupations in the Dictionary of Occupational Titles will be followed in determining whether the volunteer activities constitute the “same type of services” as the employment activities. Equally important in the determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

220.103(2) Reserved.

SOURCE: 29 CFR 553.103.

347—220.104(91D) Private individuals who volunteer services to public agencies.

220.104(1) Individuals who are not employed in any capacity by state or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. These individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in rule 220.106(91D). There are no limitations or restrictions imposed on the types of services which private individuals may volunteer to perform for public agencies.

220.104(2) Reserved.

SOURCE: 29 CFR 553.104.

347—220.105(91D) Mutual aid agreements. An agreement between the state and another state or between two or more political subdivisions for mutual aid does not change the otherwise volunteer

character of services performed by employees of such agencies pursuant to said agreement.

SOURCE: 29 CFR 553.105.

347—220.106(91D) Payment of expenses, benefits, or fees.

220.106(1) Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

220.106(2) An individual who performs hours of service as a volunteer for a public agency may receive payment for expenses without being deemed an employee for purposes of these rules. Individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.

220.106(3) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

220.106(4) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or "length of service" awards, commonly or traditionally provided to volunteers of government agencies, which meet the additional test in 220.106(6).

220.106(5) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and shall not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal:

- a. The distance traveled and the time and effort expended by the volunteer;
- b. Whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and
- c. Whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

220.106(6) Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

SOURCE: 29 CFR 553.106.

347—220.107 to 220.199 Reserved.

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

347—220.200 to 220.220 Reserved.

347—220.221(91D) Compensable hours of work.

220.221(1) Reserved.

220.221(2) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. The time includes all preshift and postshift activities which are an integral part of the employee's principal activity or which

are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and reracking fire hoses.

220.221(3) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work.

220.221(4) An employee who is not required to remain on the employer's premises but is merely required to leave work at home or with company officials where the employee may be reached is not working while on call. Time spent at home on call may be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

220.221(5) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

220.221(6) A police officer, who has completed the tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. The time spent in responding to such calls is compensable.

220.221(7) The fact that employees cannot return home after work does not necessarily mean that they continue on duty after their shift.

SOURCE: 29 CFR 553.221.

347—220.222(91D) Sleep time.

220.222(1) Reserved.

220.222(2) Sleep time cannot be excluded from the compensable hours of work where:

- a. The employee is on a tour of duty of less than 24 hours, and
- b. Where the employee is on a tour of duty of exactly 24 hours.

220.222(3) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude the time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

SOURCE: 29 CFR 553.222.

347—220.223(91D) Meal time.

220.223(1) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 207(a)(1), the public agency may exclude meal time from hours worked if all the tests in 29 CFR 785.19 are met.

220.223(2) If a public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(f) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period and all the other tests in 29 CFR 785.19 are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any meal periods would be compensable.

220.223(3) Where the public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(k), exemption for firefighters, meal time cannot be excluded from the compensable hours of work where:

- a. The firefighter is on a tour of duty of less than 24 hours, and

b. Where the firefighter is on a tour of duty of exactly 24 hours.

220.223(4) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in 29 CFR 785.19 and 785.22 are met.

SOURCE: 29 CFR 553.223.

347—220.224 Reserved.

347—220.225(91D) Early relief. It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under federal Fair Labor Standards Act, 29 U.S.C. 207(k), where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. Alternatively, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

SOURCE: 29 CFR 553.225.

347—220.226(91D) Training time.

220.226(1) The general rules for determining the compensability of training time under the federal Fair Labor Standards Act are set forth in 29 CFR 785.27 through 785.32.

220.226(2) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of governments in required training is considered to be noncompensable:

a. Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

b. Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

c. Time spent in the training described in 220.226(1) "*a*" or "*b*" is not compensable, even if all or part of the cost of the training is borne by the employer.

220.226(3) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. The free time is not compensable.

SOURCE: 29 CFR 553.226.

347—220.227 to 220.233 Reserved.

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